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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re OSCAR R. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ERICKA W.,

Defendant and Appellant.

D056412

(Super. Ct. No. SJ11747A-B)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,  
Judge. Affirmed.

Ericka W. appeals orders terminating her parental rights to her children, Oscar R.  
and Maribel M. She contends the court erred by not applying the beneficial parent-child  
relationship exception of Welfare and Institutions Code<sup>1</sup> section 366.26, subdivision

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

(c)(1)(B)(i) to termination of parental rights and adoption. She argues she maintained regular visits with her children and shared a close and beneficial relationship with them. We affirm the orders.

## FACTUAL AND PROCEDURAL BACKGROUND

On January 12, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of four-year-old Oscar and 10-month-old Maribel under section 300, subdivision (b), alleging Ericka put them at serious risk of physical harm because they had scabies, and she was doing nothing to treat the disease.

Ericka had been struggling to provide for the children and said she had to beg to pay for food and shelter. She took the children to a doctor for their scabies but did not follow the doctor's instructions and their condition worsened. They had numerous open, bleeding sores, and Maribel developed an ear infection. Ericka told the social worker they were homeless, and she could not afford to wash their clothing. The social worker offered to arrange for shelter and access to laundry facilities, but Ericka did not take advantage of the offer.

The juvenile court ordered the children detained and granted liberal supervised visitation. At the jurisdictional and dispositional hearings the court found the allegations of the petitions true, declared the children dependents of the court, ordered them placed in foster care and that Ericka comply with her case plan, including an assessment by the San Diego Regional Center.

At the six-month review hearing, the court continued services and the children's placement in foster care. Ericka completed a parenting class and progressed in therapy.

She attended regular supervised visits and Oscar wanted to return to her care. The psychologist who evaluated her assessed her with dysthymic disorder and mild mental retardation. He said she did not accept responsibility for neglecting the children and did not understand how her limitations affected her parenting skills.

The social worker reported Ericka continued weekly supervised visits but often was not able to engage the children in activities, and Maribel ran from her. Ericka's low intelligence and behavior indicated she should have Regional Center services, but it could not be verified that she had had a qualifying diagnosis before age 18 as required. Ericka lived in Tijuana and, because she gave conflicting information about where she lived, the social worker could not verify the safety of her home.

At the hearing that combined the 12- and 18-month reviews, the court found the Agency had not provided reasonable services and continued services.

At the following 18-month review hearing, the court terminated Ericka's services and set a section 366.26 hearing. By this time, Ericka had given birth to another child. He was placed in foster care with Oscar and Maribel. The social worker observed Ericka was not very affectionate with the children, and she declined the Agency's offer of additional visits. Maribel was not bonded to her, but Oscar continued to want to return to her care. The social worker attempted to help her enter a shelter where the family could receive services, but she refused.

The social worker assessed the children as adoptable. Six families in San Diego County and 65 families outside San Diego County with approved home studies were interested in adopting children like Oscar and Maribel together.

Ericka had weekly supervised visits and telephoned Oscar regularly. During visits she focused her attention on the younger children and often ignored Oscar's attempts to engage her. The social worker said Oscar acted like a parent to Ericka, asking her if she had enough money for the bus and reminding her about feeding the baby. At first he was afraid of being adopted and threatened to run away, but later said he would like to be adopted and also continue to visit Ericka. He began addressing his caregivers as his parents and asked if he already had been adopted. Maribel was reluctant to interact with Ericka and stayed close to her caregiver or to the social worker. She often refused to show Ericka any affection.

At the section 366.26 hearing, the court found Oscar and Maribel were likely to be adopted if parental rights were terminated and none of the statutory exceptions applied. It terminated parental rights and referred the children for adoption.

## DISCUSSION

Ericka contends the court erred by terminating her parental rights because substantial evidence does not support the court's determination the beneficial parent-child relationship exception to termination of parental rights and adoption did not apply.

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show termination would be detrimental in that "[t]he parents have

maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception."

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Substantial evidence supports the court's finding. Ericka showed the first prong of the beneficial parent-child relationship exception by visiting the children regularly. However, she did not meet the second prong by showing her relationship with them was so beneficial that it outweighed the advantages they would gain from being adopted. During the earlier months of his dependency, Oscar said he wanted to return to Ericka, but he usually did not initiate affection with her and he separated easily from her at the end of visits. Ericka did not provide for his needs and often ignored him, concentrating on the younger children. Oscar acted like a parent during visits, worrying whether Ericka had bus fare and instructing her on making a bottle for the baby. For a time Ericka insisted visits be at a time that was convenient for her, but caused Oscar to miss school. She did not take advantage of the Agency's offer of additional visits. When Oscar and Maribel began transitioning to a new family interested in adopting them, Ericka told Oscar to grab his siblings and run away and accused him of not loving her anymore. By

the time of the hearing, Oscar wanted to be adopted and referred to his caregivers as his parents.

As to Maribel, the social worker opined Maribel did not see Ericka as a parent, but preferred to be with her caregiver or the social worker during visits. There was no evidence she would benefit from continuing the relationship with Ericka. Substantial evidence supports the court's finding the beneficial parent-child relationship exception did not apply.

Ericka relies on *In re S.B.* (2008) 164 Cal.App.4th 289, a case from this court, to support her argument the court should have applied the beneficial parent-child relationship exception. In *In re S.B.*, we reversed the trial court's finding the beneficial parent-child relationship exception did not apply after concluding the child would be greatly harmed by loss of the significant positive relationship she shared with her father. (*Id.* at pp. 294-295.) Ericka did not make such a showing. Further, while factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the court's findings are fully supported.

DISPOSITION

The orders are affirmed.

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O'ROURKE, J.

WE CONCUR:

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McCONNELL, P. J.

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BENKE, J.